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## 40 CFR Ch. I (7–1–08 Edition)

in grant agreements, contracts or memoranda of understanding; or

(3) The areawide agency no longer has the resources or the commitment to continue water quality planning activities within the designated boundaries.

(c) *Impact of de-designation.* Once an areawide planning agency's designation has been withdrawn the State agency shall assume direct responsibility for continued water quality planning and oversight of implementation within the area.

(d) *Designated management agencies (DMA).* In accordance with section 208(c)(1) of the Act, management agencies shall be designated by the Governor in consultation with the designated planning agency. EPA shall approve such designations unless the DMA lacks the legal, financial and managerial authority required under section 208(c)(2) of the Act. Designated management agencies shall carry out responsibilities specified in Water Quality Management (WQM) plans. Areawide planning agencies shall monitor DMA activities in their area and recommend necessary plan changes during the WQM plan update. Where there is no designated areawide planning agency, States shall monitor DMA activities and make any necessary changes during the WQM plan update.

### § 130.10 State submittals to EPA.

(a) The following must be submitted regularly by the States to EPA:

(1) The section 305(b) report, in FY 84 and every two years thereafter, and the annual section 205(j) certification or update of the 305(b) water quality report; (Approved by OMB under the control number 2040–0071)

(2) The annual State work program(s) under sections 106 and 205(j) of the Act; and (Approved by OMB under the control number 2010–0004)

(3) Revisions or additions to water quality standards (WQS) (303(c)). (Approved by OMB under 2040–0049)

(b) The Act also requires that each State initially submit to EPA and revise as necessary the following:

(1) Continuing planning process (CPP) (303(e));

(2) Identification of water quality-limited waters still requiring TMDLs

(section 303(d)), pollutants, and the priority ranking including waters targeted for TMDL development within the next two years as required under § 130.7(b) in accordance with the schedule set for in § 130.7(d)(1).

(Approved by the Office of Management and Budget under control number 2040–0071)

(3) Total maximum daily loads (TMDLs) (303(d)); and

(4) Water quality management (WQM) plan and certified and approved WQM plan updates (208, 303(e)). (Paragraph (b)(1), (4) approved by OMB under the control number 2010–0004).

(c) The form and content of required State submittals to EPA may be tailored to reflect the organization and needs of the State, as long as the requirements and purposes of the Act, this part and, where applicable, 40 CFR parts 29, 30, 33 and 35, subparts A and J are met. The need for revision and schedule of submittals shall be agreed to annually with EPA as the States annual work program is developed.

(d) Not later than February 4, 1989, each State shall submit to EPA for review, approval, and implementation—

(1) A list of those waters within the State which after the application of effluent limitations required under section 301(b)(2) of the CWA cannot reasonably be anticipated to attain or maintain (i) water quality standards for such waters reviewed, revised, or adopted in accordance with section 303(c)(2)(B) of the CWA, due to toxic pollutants, or (ii) that water quality which shall assure protection of public health, public water supplies, agricultural and industrial uses, and the protection and propagation of a balanced population of shellfish, fish and wildlife, and allow recreational activities in and on the water;

(2) A list of all navigable waters in such State for which the State does not expect the applicable standard under section 303 of the CWA will be achieved after the requirements of sections 301(b), 306, and 307(b) are met, due entirely or substantially to discharges from point sources of any toxic pollutants listed pursuant to section 307(a);

(3) For each segment of navigable waters included on such lists, a determination of the specific point source discharging any such toxic pollutant

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which is believed to be preventing or impairing such water quality and the amount of each such toxic pollutant discharged by each such source.

(Approved by the Office of Management and Budget under control number 2040-0152)

(4) For the purposes of listing waters under § 130.10(d)(2), *applicable standard* means a numeric criterion for a priority pollutant promulgated as part of a state water quality standard. Where a state numeric criterion for a priority pollutant is not promulgated as part of a state water quality standard, for the purposes of listing waters “applicable standard” means the state narrative water quality criterion to control a priority pollutant (e.g., no toxics in toxic amounts) interpreted on a chemical-by-chemical basis by applying a proposed state criterion, an explicit state policy or regulation, or an EPA national water quality criterion, supplemented with other relevant information.

(5) If a water meets either of the two conditions listed below the water must be listed under § 130.10(d)(2) on the grounds that the applicable standard is not achieved or expected to be achieved due entirely or substantially to discharges from point sources.

(i) Existing or additional water quality-based limits on one or more point sources would result in the achievement of an applicable water quality standard for a toxic pollutant; or

(ii) The discharge of a toxic pollutant from one or more point sources, regardless of any nonpoint source contribution of the same pollutant, is sufficient to cause or is expected to cause an excursion above the applicable water quality standard for the toxic pollutant.

(6) Each state shall assemble and evaluate all existing and readily available water quality-related data and information and each state shall develop the lists required by paragraphs (d)(1), (2), and (3) of this section based upon this data and information. At a minimum, all existing and readily available water quality-related data and information includes, but is not limited to, all of the existing and readily available data about the following categories of waters in the state:

(i) Waters where fishing or shellfish bans and/or advisories are currently in effect or are anticipated.

(ii) Waters where there have been repeated fishkills or where abnormalities (cancers, lesions, tumors, etc.) have been observed in fish or other aquatic life during the last ten years.

(iii) Waters where there are restrictions on water sports or recreational contact.

(iv) Waters identified by the state in its most recent state section 305(b) report as either “partially achieving” or “not achieving” designated uses.

(v) Waters identified by the states under section 303(d) of the CWA as waters needing water quality-based controls.

(vi) Waters identified by the state as priority waterbodies. (State Water Quality Management plans often include priority waterbody lists which are those waters that most need water pollution control decisions to achieve water quality standards or goals.)

(vii) Waters where ambient data indicate potential or actual exceedances of water quality criteria due to toxic pollutants from an industry classified as a primary industry in appendix A of 40 CFR part 122.

(viii) Waters for which effluent toxicity test results indicate possible or actual exceedances of state water quality standards, including narrative “free from” water quality criteria or EPA water quality criteria where state criteria are not available.

(ix) Waters with primary industrial major dischargers where dilution analyses indicate exceedances of state narrative or numeric water quality criteria (or EPA water quality criteria where state standards are not available) for toxic pollutants, ammonia, or chlorine. These dilution analyses must be based on estimates of discharge levels derived from effluent guidelines development documents, NPDES permits or permit application data (e.g., Form 2C), Discharge Monitoring Reports (DMRs), or other available information.

(x) Waters with POTW dischargers requiring local pretreatment programs where dilution analyses indicate exceedances of state water quality criteria (or EPA water quality criteria

where state water quality criteria are not available) for toxic pollutants, ammonia, or chlorine. These dilution analyses must be based upon data from NPDES permits or permit applications (e.g., Form 2C), Discharge Monitoring Reports (DMRs), or other available information.

(xi) Waters with facilities not included in the previous two categories such as major POTWs, and industrial minor dischargers where dilution analyses indicate exceedances of numeric or narrative state water quality criteria (or EPA water quality criteria where state water quality criteria are not available) for toxic pollutants, ammonia, or chlorine. These dilution analyses must be based upon estimates of discharge levels derived from effluent guideline development documents, NPDES permits or permit application data, Discharge Monitoring Reports (DMRs), or other available information.

(xii) Waters classified for uses that will not support the “fishable/swimmable” goals of the Clean Water Act.

(xiii) Waters where ambient toxicity or adverse water quality conditions have been reported by local, state, EPA or other Federal Agencies, the private sector, public interest groups, or universities. These organizations and groups should be actively solicited for research they may be conducting or reporting. For example, university researchers, the United States Department of Agriculture, the National Oceanic and Atmospheric Administration, the United States Geological Survey, and the United States Fish and Wildlife Service are good sources of field data and research.

(xiv) Waters identified by the state as impaired in its most recent Clean Lake Assessments conducted under section 314 of the Clean Water Act.

(xv) Waters identified as impaired by nonpoint sources in the *America's Clean Water: The States' Nonpoint Source Assessments* 1985 (Association of State and Interstate Water Pollution Control Administrators (ASIWPCA)) or waters identified as impaired or threatened in a nonpoint source assessment submitted by the state to EPA under section 319 of the Clean Water Act.

(xvi) Surface waters impaired by pollutants from hazardous waste sites on the National Priority List prepared under section 105(8)(A) of CERCLA.

(7) Each state shall provide documentation to the Regional Administrator to support the state's determination to list or not to list waters as required by paragraphs (d)(1), (d)(2) and (d)(3) of this section. This documentation shall be submitted to the Regional Administrator together with the lists required by paragraphs (d)(1), (d)(2), and (d)(3) of this section and shall include as a minimum:

(i) A description of the methodology used to develop each list;

(ii) A description of the data and information used to identify waters and sources including a description of the data and information used by the state as required by paragraph (d)(6) of this section;

(iii) A rationale for any decision not to use any one of the categories of existing and readily available data required by paragraph (d)(6) of this section; and

(iv) Any other information requested by the Regional Administrator that is reasonable or necessary to determine the adequacy of a state's lists. Upon request by the Regional Administrator, each state must demonstrate good cause for not including a water or waters on one or more lists. Good cause includes, but is not limited to, more recent or accurate data; more accurate water quality modeling; flaws in the original analysis that led to the water being identified in a category in §130.10(d)(6); or changes in conditions, e.g., new control equipment, or elimination of discharges.

(8) The Regional Administrator shall approve or disapprove each list required by paragraphs (d)(1), (d)(2), and (d)(3) of this section no later than June 4, 1989. The Regional Administrator shall approve each list required under paragraphs (d)(1), (d)(2), and (d)(3) of this section only if it meets the regulatory requirements for listing under paragraphs (d)(1), (d)(2), and (d)(3) of this section and if the state has met all the requirements of paragraphs (d)(6) and (d)(7) of this section.

(9) If a state fails to submit lists in accordance with paragraph (d) of this

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section or the Regional Administrator does not approve the lists submitted by such state in accordance with this paragraph, then not later than June 4, 1990, the Regional Administrator, in cooperation with such state, shall implement the requirements of CWA section 304(l) (1) and (2) in such state.

(10) If the Regional Administrator disapproves a state's decision with respect to one or more of the waters required under paragraph (d) (1), (2), or (3) of this section, or one or more of the individual control strategies required pursuant to section 304(l)(1)(D), then not later than June 4, 1989, the Regional Administrator shall distribute the notice of approval or disapproval given under this paragraph to the appropriate state Director. The Regional Administrator shall also publish a notice of availability, in a daily or weekly newspaper with state-wide circulation or in the FEDERAL REGISTER, for the notice of approval or disapproval. The Regional Administrator shall also provide written notice to each discharger identified under section 304(l)(1)(C), that EPA has listed the discharger under section 304(l)(1)(C). The notice of approval and disapproval shall include the following:

(i) The name and address of the EPA office that reviews the state's submittals.

(ii) A brief description of the section 304(l) process.

(iii) A list of waters, point sources and pollutants disapproved under this paragraph.

(iv) If the Regional Administrator determines that a state did not provide adequate public notice and an opportunity to comment on the lists prepared under this section, or if the Regional Administrator chooses to exercise his or her discretion, a list of waters, point sources, or pollutants approved under this paragraph.

(v) The name, address, and telephone number of the person at the Regional Office from whom interested persons may obtain more information.

(vi) Notice that written petitions or comments are due within 120 days.

(11) As soon as practicable, but not later than June 4, 1990, the Regional Office shall issue a response to petitions or comments received under para-

graph (d)(10) of this section. Notice shall be given in the same manner as notice described in paragraph (d)(10) of this section, except for the following changes to the notice of approvals and disapprovals:

(i) The lists of waters, point sources and pollutants must reflect any changes made pursuant to comments or petitions received.

(ii) A brief description of the subsequent steps in the section 304(l) process shall be included.

[50 FR 1779, Jan. 11, 1985, as amended at 54 FR 258, Jan. 4, 1989; 54 FR 23897, June 2, 1989; 57 FR 33050, July 24, 1992]

### § 130.11 Program management.

(a) State agencies may apply for grants under sections 106, 205(j) and 205(g) to carry out water quality planning and management activities. Interstate agencies may apply for grants under section 106 to carry out water quality planning and management activities. Local or regional planning organizations may request 106 and 205(j) funds from a State for planning and management activities. Grant administrative requirements for these funds appear in 40 CFR parts 25, 29, 30, 33 and 35, subparts A and J.

(b) Grants under section 106 may be used to fund a wide range of activities, including but not limited to assessments of water quality, revision of water quality standards (WQS), development of alternative approaches to control pollution, implementation and enforcement of control measures and development or implementation of ground water programs. Grants under section 205(j) may be used to fund water quality management (WQM) planning activities but may not be used to fund implementation of control measures (see part 35, subpart A). Section 205(g) funds are used primarily to manage the wastewater treatment works construction grants program pursuant to the provisions of 40 CFR part 35, subpart J. A State may also use part of the 205(g) funds to administer approved permit programs under sections 402 and 404, to administer a statewide waste treatment management program under section 208(b)(4)